102D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 102-415
Part 1

TECHNOLOGY TRANSFER IMPROVEMENTS ACT OF 1991

DECEMBER 6, 1991.—Ordered to be printed

Mr. BROWN, from the Committee on Science, Space, and Technology, submitted the following

REPORT

[To accompany H.R. 191 which on January 3, 1991, was referred jointly to the Committee on Science, Space, and Technology and the Committee on the Judiciary]

[Including cost estimate of the Congressional Budget Office]

The Committee on Science, Space, and Technology, to whom was referred the bill (H.R. 191) to amend the Stevenson-Wydler Technology Innovation Act of 1980 to enhance technology transfer for works prepared under certain cooperative research and development agreements, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

49-679

H703-10

SECTION 1. SHORT TITLE.

This Act may be cited as the "Technology Transfer Improvements Act of 1991".

SEC. 2. COPYRIGHT FOR SOFTWARE.

Section 105 of title 17, United States Code, is amended—

(1) by striking "Copyright" and inserting in lieu thereof "(a) GENERAL RULE.—Except as provided in subsection (b), copyright"; and

(2) by adding at the end the following new subsection:

"(b) COPYRIGHT OF COMPUTER PROGRAMS.—Each Federal agency may secure copyright registration on behalf of the United States and the United States shall have all copyright rights in and be the owner of any computer program (including instructions necessary to use the program, but not including data, data bases, or data base retrieval programs) authored in while or in part by employees of the United States Government in the course of work under a cooperative research and development agreement entered into under the authority of section 12(a)(1) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(a)(1) or a similar agreement entered into under section 203(c) (5) and (6) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c) (5) and (6)), or provided by the United States Government under section 12(b)(1) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(b)(1)), and may grant or agree to grant in advance to a participating party in the agreement, licenses or assignments for such copyrights, or options thereto, retaining such other rights as the Federal agency deems appropriate.".

SEC. 3. AMENDMENTS TO SECTION 12 OF THE STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980.

Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710A) is amended—

(1) in subsection (b)(4), by inserting ", including computer software," after "intellectual property"; and

(2) in subsection (b)(5), by inserting "or computer programs described in section 105(b) of title 17, United States Code" after "of the United States".

SEC. 4. DEFINITION OF COMPUTER SOFTWARE.

Section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703) is amended by adding at the end the following new paragraph:

"(14) 'Computer software' has the meaning given the term 'computer program' in section 101 of title 17, United States Code, and includes instructions necessary to use the program, but does not include data, data bases, or data base retrieval programs.".

SEC. 5. ROYALTY PAYMENTS TO AUTHORS.

(a) Section 14(a)(1)(A), (2), and (3) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c(a)(1)(A), (2), and (3)) is amended—

(1) by inserting "or computer software" after "inventions" each place it appears;

(2) by inserting "or computer software" after "invention" each place it appears;

(3) by inserting "or author" after "inventor" each place it appears;

(4) by inserting "or co-author" after "co-inventor" each place it appears;

(5) by inserting "or authors" after "inventors" each place it appears;

(6) by inserting "or co-authors" after "co-inventors" each place it appears;

(7) by inserting "or author's" after "inventor's" each place it appears.

(b) Section 14(a)(1)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c(a)(1)(B) is amended—

(1) by inserting "or computer software" after "income from any invention";

(2) by inserting "or computer software was developed" after "invention occurred";

(3) by inserting "or computer software" after "licensing of inventions" in clause (i);

(4) by inserting "or computer software which was developed" after "with respect to inventions" in clause (i); and

(5) by inserting "or computer software" after "organizations for invention" in clause (i).

(c) Section 14(c)(1) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c(c)) is amended by inserting "or author" after "including inventor".

SEC. 6. TECHNICAL AND CONFORMING AMENDMENTS.

Section 12(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(c)), is amended by inserting "or computer software" after "inventions" each place it appears.

Amend the title to read as follows:

A bill to amend title 17 of the United States Code and the Stevenson-Wydler Technology Innovation Act of 1980 to enhance technology transfer for works prepared under certain cooperative research and development agreements.

I. Purpose of the Bill

H.R. 191, as reported, amends United States copyright law in order to authorize the federal government to obtain copyrights in computer software development by federal employees and to authorize the federal government to grant intellectual property rights for computer software to a collaborating party in a cooperative research and development agreement (CRADA) or under the provisions of the National Aeronautics Space Act. In addition, H.R. 191 amends the Stevenson-Wydler Technology Innovation Act, which is the enabling legislation for cooperative research and development agreements, to bring it into conformity with current copyright law and to allow royalty payments to federal employees who develop certain software. The intent of this authorization is to increase the transfer of technology from the federal government to the private sector, and thus to increase United States competitiveness in the international market.

II. Background and Need for the Legislation

The 1903 Copyright Act (17 U.S.C. 105) prohibits the federal government from copyrighting any of its materials. The policy was designed to ensure easy and inexpensive public access to federal documents. Today, however, the use of copyrights has expanded to cover computer programs. As a result, the provision barring federal government copyrighting may now be hindering commercialization of certain federally developed computer software, in effect, limiting its public use.

In several studies, including a March 1988 survey by the General Accounting Office (GAO), federal laboratory officials cited the federal copyright prohibition as one of the major impediments to technology transfer. They argue that private contractors are reluctant to work with federal laboratories to develop or refine software because there is no intellectual property protection to ensure that their competitors cannot market the same or similar software. Companies are unwilling to make the substantial investments needed to develop federal software into commercial products without assurances that competitors cannot benefit from their investment in software improvement.

Similar concerns about the lack of patent protection for federal inventions were present when the Committee passed the Stevenson-Wydler Act of 1980, the Federal Technology Transfer Act of 1986, and the Patent and Trademark Amendments of 1980 (Bayh-Dole). These Acts enable certain categories of private sector entities to patent inventions arising from federally-funded research and to allow federal agencies to give exclusive licenses to federally-funded inventions. These laws also created incentives for commer-

cialized inventions by ensuring federal inventors and their laboratories a share of the royalties. No such incentives exist for federal employees working on software or other innovations usually protected by copyright.

H.R. 191, as reported, addresses these concerns by permitting the copyright of software that is assigned by the government to a CRADA, developed under a CRADA by the government and the collaborating private entity, or developed under certain provisions of the National Aeronautics and Space Act.

III. Committee Actions and Explanation of the Bill

101st Congress

The Subcommittee on Science, Research and Technology held an oversight hearing on April 26, 1990 to explore whether the federal government should be allowed to copyright federally developed software to encourage its transfer to the private sector. Witnesses included representatives from government agencies (Department of Commerce, Department of Defense), Congressional analyses groups (General Accounting Office, Office of Technology Assessment), the Register of Copyright from the Library of Congress, legal experts and engineers from the federal government and industry who have had experience with the problems associated with lack of copyright of software developed in the federal laboratories.

With the exception of the witness from the Office of Technology Assessment (OTA), all the government witnesses strongly supported the need for copyright protection of federally developed software. The OTA representative cautioned that more needs to be known about the quantity, quality and the definition of the software to be copyrighted before initiating any legislation. Several examples were cited where the transfer of technology in energy, aerodynamics, space and training curricula were inhibited by the unavailability of copyright protection for the federally developed software associated with those programs.

The hearing concluded with a general agreement that copyright of federally developed software would enhance technology transfer, but questions remained as to the legal definition of the software to be protected and whether such protection should be made through a change in the copyright law or through a modification in the Stevenson-Wydler Technology Innovation Act as amended. The hearing record is printed as Committee Publication Number 101–117.

102d Congress

On January 3, 1991, Mrs. Morella introduced H.R. 191, the Technology Transfer Improvements Act of 1991, which was identical to her bill, H.R. 5850, from the previous Congress. The primary purpose of the H.R. 191, as introduced, was to amend the Stevenson-Wydler Act to allow the government to seek copyright protection for computer software developed by federal employees and to allow the federal government to grant intellectual property rights for computer software to a collaborating party in a CRADA. In addition, H.R. 191, as introduced, allowed royalty payments to federal employees who are authors of computer software.

After introduction by Mrs. Morella, H.R. 191 was referred to the House Committee on Science, Space, and Technology and its Subcommittee on Technology and Competitiveness as well as to the House Committee on the Judiciary. In the Senate, Senator Rockefeller introduced S. 1581, which is the same text as H.R. 191. Subsequently, S. 1581 was ordered reported with an amendment to the Senate by the Committee on Commerce, Science and Transportation.

On May 30, 1991, the Subcommittee on Technology and Competitiveness held an oversight hearing on "Transfer of Technology from Federal Laboratories." Several witnesses mentioned the need for legislation to provide for a limited federal copyright of software. Ms. Deborah L. Wince-Smith, Assistant Secretary of Commerce for Technology Policy, Department of Commerce, said, "The lack of copyright protection has been cited by virtually every agency involved in R&D as a serious barrier to the commercialization of such software. Passage of this bill (H.R. 191) would have a significant impact by eliminating firms' concerns that their collaborative work with federal laboratories may fall into public domain and by encouraging federal employees to develop software as part of the collaborative research." Ms. Cherri J. Langenfeld, Director of the Office of Technology Analysis, Department of Energy, testified that H.R. 191 by "[E]xtending copyright protection to software works created by federal employees, by amending the Stevenson-Wydler Act" could boost technology transfer.

On July 18, 1991, the Subcommittee held a legislative hearing on H.R. 191. Dr. Robert White, Under Secretary of Technology for the Department of Commerce, supported H.R. 191 stating that its passage would aid U.S. competitiveness. He also noted that it is an anomaly to allow government-owned, contractor-operated laboratories (GOCOs) to copyright computer software but not government-owned, government-operated laboratories (GOGOs) such as NIST.

The written testimony of Ms. Dorothy Schrader, Associate Register of Copyrights for Legal Affairs, for the Library of Congress provided a thorough history of U.S. copyright law and the policy considerations behind legislative changes to the copyright law. For example, she noted that the issue of copyright protection for government-created works was discussed during consideration of the bill that became the 1976 Copyright Act. At that time, there was a strong policy towards public dissemination. On the other hand, Ms. Schrader agreed at the hearing with Dr. White's sentiments that it is an anomaly to treat government authors of computer software and inventors differently. Ms. Schrader also noted that H.R. 191 is a limited response to a specific problem, i.e., the inability of federal agencies to engage easily in technology transfer that involves computer software. H.R. 191 does not address the overall problem of what is the best means to protect computer software under current intellectual property law. In addition, Ms. Schrader expressed a slight preference for amending the Copyright Law, and not the Stevenson-Wydler Act, to provide copyright protection for federally-developed software.

The other witnesses were private citizens. Dr. James Chandler, a Professor of Law at George Washington University who has written extensively on computer and intellectual property law, strongly

endorsed passage of H.R. 191 as a first step to increasing U.S. competitiveness. Dr. Chandler stated that computer software, unlike a book, is a utilitarian product with commercial value. Hence, he noted that the interest of the federal government in software should be protected if it will enhance national competitiveness. He further noted that, unless we protect our software, the primary beneficiary of public dissemination of federal software will be the Japanese. Dr. Chandler also stated that it would be desirable to extend copyright protection for computer software beyond the context of a CRADA—to all commercially valuable software.

In contrast to Dr. Chandler, Mr. Stephen Metalitz representing the Information Industry Association, emphatically stated that it is a cornerstone of democracy in the United States that the flow of information from the government to the public be unimpeded. He did recognize that technology transfer may be useful in enhancing United States competitiveness. He did not favor enactment of H.R. 191, however, unless a record is developed specifying what software could be commercialized and unless safeguards are provided to ensure that its use was strictly limited.

Mr. Mauro Togneri, Vice-Chairman of Intellectual Property Committee for the Institute of Electrical and Electronics Engineers (IEEE), testified that IEEE supported H.R. 191 in order to provide a level playing field with other nations. Mr. Togneri also emphasized, however, that software that fosters communication should be freely available to the public. Mr. Togneri submitted for the record, specific changes that IEEE would like to see made in H.R. 191. The record of the July hearing is printed as Committee Publication Number 102–41.

The Subcommittee on Technology and Competitiveness met on November 7, 1991 to consider H.R. 191. Mr. Thornton, who had participated in the drafting of the 1980 Bayh-Dole Act, and Mrs. Morella offered an amendment in the nature of a substitute to H.R. 191 which was adopted. The Thornton/Morella amendment changed H.R. 191 to clarify its scope and to bring it into conformity with United States copyright law. The change was made since H.R. 191, as introduced, was written exclusively as an amendment to the Stevenson-Wydler Act and contained a "notwithstanding" provision that superseded copyright law. This raised questions about how certain aspects of traditional copyright law, such as the fair use doctrine, relate to the legislation. H.R. 191, as amended, was reported favorably by voice vote after the approval of the amendment in the nature of a substitute offered by Mr. Thornton on behalf of himself and Mrs. Morella.

The full Committee on Science, Space, and Technology met on November 22, 1991 and voted by unanimous voice vote to favorably report H.R. 191 without further consideration.

IV. Section-by-Section Analysis

Section 1. Short Title

This Act may be cited as the Technology Transfer Improvements Act of 1991.

Section 2. Copyright for Software

This section authorizes each federal agency to secure copyright registration on behalf of the United States in computer software prepared, in whole or part, by United States government employees in the course of research and development work under a CRADA entered into under the Stevenson-Wydler Technology Innovation Act, or work conducted under the National Aeronautics and Space Administration Act, or when the software is provided by the United States government under a CRADA. It provides that federal agencies may license the software to collaborating private sector partners. The Committee considers CRADAs, including those involving computer software, to be technology transfer activities within the scope of the Commerce Department biennial report on technology transfer.

Section 3. Amendments to Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980

This section amends selected sections of the Stevenson-Wydler Act to include computer software in various sections describing treatment of inventions.

Section 4. Definition of Computer Software

This section defines computer software for purposes of the Stevenson-Wydler Technology Innovation Act of 1980 as a computer program as defined in the copyright code plus related instructions but not data, data bases, or data retrieval systems.

Section 5. Royalty Payments to Authors

This section amends royalty sharing provisions of the Stevenson-Wydler Technology Innovation Act, which provide that federal employee inventors may receive 15 percent of the royalties for patented inventions, to provide further that federal employee authors of computer software may also receive 15 percent of the royalties for their copyrighted works.

Section 6. Technical and conforming amendments

This series of amendments makes a series of conforming amendments to the Stevenson-Wydler Act to permit royalty sharing for copyrights.

V. Oversight Findings and Recommendations

Pursuant to rule XI, clause 2(l)(3) of the Rules of the House of Representatives, and under authority of rule X, clause 2(b)(1), and clause 3(f), the result and findings of the oversight activities considered by the Committee on Science, Space, and Technology have been adopted and are incorporated in the recommendations found in the present bill and report.

VI. Summary of Government Operations Committee Findings and Recommendations

No findings and recommendations on oversight activity pursuant to rule X, clause 2(b)(2), and rule XI, clause 2(l)(3), of the Rules of

the House of Representatives, have been submitted by the Committee on Government Operations for inclusion in this report.

VII. Congressional Budget Act Information

This bill provides for no new budget authority, and consequently the provisions of section 308(a) of the Congressional Budget Act of 1974 are not applicable.

VIII. Congressional Budget Office Cost Estimate

In compliance with section 403 of the Congressional Budget Act of 1974 and rule XI, clause 2(l)(3) of the Rules of the House of Representatives, the report of the Congressional Budget Office follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, November 25, 1991.

Hon. George E. Brown, Jr.,
Chariman, Committee on Science, Space, and Technology,
U.S. House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 191, the Technology Transfer Improvements Act of 1991, as ordered reported by the House Committee on Science, Space, and Technology on November 22, 1991. Enactment of this bill could result in additional offsetting receipts for the federal government, but we expect that the amount of any such receipts would not be significant. Because this bill would affect direct spending, it would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget the Emergency Deficit Control Act of 1985. As a result, the estimate required under clause 8 of House Rule XXI also is attached.

H.R. 191 would permit federal agencies to secure a copyright on behalf of the federal government on any computer software prepared by federal government employees working under a cooperative research and development agreement. The bill also would permit the copyrighting agency to grant copyright licenses to collaborating parties, and would require the copyrighting agency to share any royalties received with the software author(s).

Based on information from the Copyright Office, CBO estimates that enactment of H.R. 191 would result in no significant additional cost to the federal government. Royalties from licenses granted by copyrighting agencies would be recorded as offsetting receipts (that is, negative outlays), but would amount to less than $500,000 a year.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John Webb, who can be reached at 226-2860.

Sincerely,

Robert D. Reischauer,
Director.

CONGRESSIONAL BUDGET OFFICE ESTIMATE [1]

The applicable cost estimate of this act for all purposes of sections 252 and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be as follows:

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995
Change in outlays	0	0	0	0
Change in receipts	(2)	(2)	(2)	(2)

[1] An estimate of H.R. 191 as ordered reported by the House Committee on Science, Space, and Technology on November 22, 1991. This estimate was transmitted by the Congressional Budget Office on November 25, 1991.
[2] Not applicable.

IX. Effect of Legislation on Inflation

In accordance with clause 2(l)(4) of rule XI of the House of Representatives, this legislation is assessed to have no inflationary effect on prices and costs in the operation of the national economy.

X. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 105 of Title 17, United States Code

§ 105. Subject matter of copyright: United States Government works

[Copyright] *(a) General Rule.—Except as provided; in subsection (b), copyright* protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

(b) Copyright of Computer Programs.—Each Federal agency may secure copyright registration on behalf of the United States and the United States shall have all copyright rights in and be the owner of any computer program (including instructions necessary to use the program, but not including data, data bases, or data base retrieval programs) authored in whole or in part in part by employees of the United States Government in the course of work under a cooperative research and development agreement entered into under the authority of section 12(a)(1) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(a)(1)) or a similar agreement entered into under section 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(5) and (6)), or provided by the United States Government under section 12(b)(1) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(b)(1), and may grant or agree to grant in advance to a participating party in the agreement, licenses or assignments for such copy-

rights, or options thereto, retaining such other rights as the Federal agency deems appropriate.

STEVENSON-WYDLER ACT OF 1980

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SEC. 4. DEFINITIONS.

As used in this Act, unless the context otherwise requires, the term—

(1) * * *

* * * * * * *

(14) "Computer software" has the meaning given the term "computer program" in section 101 of title 17, United States Code, and includes instructions necessary to use the program, but does not include data, data bases, or date base retrieval programs.

* * * * * * *

SEC. 12. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

(a) * * *

(b) ENUMERATED AUTHORITY.—Under agreements entered into pursuant to subsection (a)(1), a Government-operated Federal laboratory, and, to the extent provided in an agency-approved joint work statement, a Government-owned, contractor-operated laboratory, may (subject to subsection (c) of this section)—

(1) * * *

* * * * * * *

(4) determine rights in other intellectual property, *including computer software*, developed under an agreement entered into under subsection (a)(1); and

(5) to the extent consistent with any applicable agency requirements and standards of conduct, permit employees or former employees of the laboratory to participate in efforts to commercialize inventions they made while in the service of the United States *or computer programs described in section 105(b) of title 17, United States Code.*

A Government-owned, contractor-operated laboratory that enters into a cooperative research and development agreement under subsection (a)(1) may use or obligate royalties or other income accruing to such laboratory under such agreement with respect to any invention only (i) for payments to investors; (ii) for the purposes described in section 14(a)(1)(B) (i), (ii), and (iv); and (iii) for scientific research and development consistent with the research and development mission and objectives of the laboratory.

(c) CONTRACT CONSIDERATIONS.—(1) A Federal agency may issue regulations on suitable procedures for implementing the provisions of this section; however, implementation of this section shall not be delayed until issuance of such regulations.

(2) The agency in permitting a Federal laboratory to enter into agreements under this section shall be guided by the purposes of this Act.

(3)(A) Any agency using the authority given it under subsection (a) shall review standards of conduct for its employees for resolving potential conflicts of interest to make sure they adequately establish guidelines for situations likely to arise through the use of this authority, including but not limited to cases where present or former employees or their partners negotiate licenses or assignments of titles to inventions *or computer software* or negotiate cooperative research and development agreements with federal agencies (including the agency with which the employee involved is or was formerly employed).

(B) If, in implementing subparagraph (A), an agency is unable to resolve potential conflicts of interest within its current statutory framework, it shall propose necessary statutory changes to be forwarded to its authorizing committees in Congress.

(4) The laboratory director in deciding what cooperative research and development agreements to enter into shall—

(A) give special consideration to small business firms, and consortia involving small business firms; and

(B) give preference to business units located in the United States which agree that products embodying inventions *or computer software* made under the cooperative research and development agreement or produced through the use of such inventions *or computer software* will be manufactured substantially in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, as appropriate, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

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SEC. 14. DISTRIBUTION OF ROYALTIES RECEIVED BY FEDERAL AGENCIES.

(a) IN GENERAL.—(1) Except as provided in paragraphs (2) and (4), any royalties or other income received by a Federal agency from the licensing or assignment of inventions under agreements entered into by Government-operated Federal laboratories under section 12, and inventions of Government-operated Federal laboratories licensed under section 207 of title 35, United States Code, or under any other provisions of law, shall be retained by the agency whose laboratory produced the invention and shall be disposed of as follows:

(A)(i) The head of the agency or his designee shall pay at least 15 percent of the royalties or other income the agency receives on account of any invention *or computer software* to the inventor *or author* (or co-inventors *or co-author*) if the inventor *or author* (or each such co-inventor *or co-author*) has assigned his or her rights in the invention *or computer software* to the United States. This clause shall take effect on the date of the the enactment of this section unless the agency publishes a notice in the Federal Register within 90 days of such date indicating its election to file a Notice of Proposed Rulemaking pursuant to clause (ii).

(ii) An agency may promulgate, in accordance with section 553 of title 5, United States Code, regulations providing for an alternative program for sharing royalties with inventors *or authors* under clause (i). Such regulations must—

(I) guarantee a fixed minimum payment to each such inventor *or author*, each year that the agency receives royalties from that inventor's *or author's* invention *or computer software;*

(II) provide a percentage royalty share to each such inventor *or author*, each year that the agency receives royalties from that inventor's *or author's* invention *or computer software* in excess of a threshold amount;

(III) provide that total payments to all such inventors *or authors* shall exceed 15 percent of total agency royalties in any given fiscal year; and

(IV) provide appropriate incentives from royalties for those laboratory employees who contribute substantially to the technical development of a licensed invention between the time of the filing of the patent application and the licensing of the invention *or computer software.*

(iii) An agency that has published its intention to promulgate regulations under clause (ii) may elect not to pay inventors *or authors* under clause (i) until the expiration of two years after the date of the enactment of this Act or until the date of the promulgation of such regulations, whichever is earlier. If any agency makes such an election and after two years the regulations have not been promulgated, the agency shall make payments (in accordance with clause (i)) of at least 15 percent of the royalties involved, retroactive to the date of the enactment of this Act. If promulgation of the regulations occurs within two years after the date of the enactment of this Act, payments shall be made in accordance with such regulations, retroactive to the date of the enactment of this Act. The agency shall retain its royalties until the inventor's *or author's* portion is paid under either clause (i) or (ii). Such royalties shall not be transferred to the agency's Government-operated laboratories under subparagraph (B) and shall not revert to the Treasury pursuant to paragraph (2) as a result of any delay caused by rulemaking under this subparagraph.

(B) The balance of the royalties or other income shall be transferred by the agency to its Government-operated laboratories, with the majority share of the royalties or other income from any invention *or computer software* going to the laboratory where the invention occurred *or computer software was developed*; and the funds so transferred to any such laboratory may be used or obligated by that laboratory during the fiscal year in which they are received or during the succeeding fiscal year—

(i) for payment of expenses incidental to the administration and licensing of inventions *or computer software* by that laboratory or by the agency with respect to inventions *or computer software which was developed* which occurred at the laboratory, including the fees or other costs for the services of other agencies, persons, or organizations for in-

vention *or computer software* management and licensing services;

* * * * * * *

(2) If, after payments to inventors *or authors* under paragraph (1), the royalties received by an agency in any fiscal year exceed 5 percent of the budget of the Government-operated laboratories of the agency for that year, 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent may be used or obligated for the purposes described in clauses (i) through (iv) of paragraph (1)(B) during that fiscal year or the succeeding fiscal year. Any funds not so used or obligated shall be paid into the Treasury of the United States.

(3) Any payment made to an employee under this section shall be in addition to the regular pay of the employee and to any other awards made to the employee, and shall not affect the entitlement of the employee to any regular pay, annuity, or award to which he is otherwise entitled or for which he is otherwise eligible or limit the amount thereof. Any payment made to an inventor *or author* as such shall continue after the inventor *or author* leaves the laboratory or agency. Payments made under this section shall not exceed $100,000 per year to any one person, unless the President approves a larger award (with the excess over $100,000 being treated as a Presidential award under section 4504 of title 5, United States Code).

* * * * * * *

(c) REPORTS.—(1) In making their annual budget submissions Federal agencies shall submit, to the appropriate authorization and appropriation committees of both Houses of the Congress, summaries of the amount of royalties or other income received and expenditures made (including inventor *or author* awards) under this section.

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XI. COMMITTEE RECOMMENDATION

A quorum being present, on November 22, 1991, the Committee favorably reported the bill, H.R. 191, as amended, by voice vote, and recommends its enactment.

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